

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

Willie James Asbury, #200788,  
*Aka Sa'id Abdullah al'Rashid,*

Plaintiff,

v.

David Tartarsky, Don Driskell; Joette  
Scarborough; John Kinard; James Barber,  
III; Joseph McCrorey; David Norton;  
Dennis Bush; Sharonda Sutton; Gregory  
Washington; J Tomarchio; Nurse Smith;  
Nurse Monroe; Lt. Copeland; Sgt.  
Cunningham,

Defendants.

No. 8:13-cv-3364-RMG

**ORDER**

This matter is before the Court on the Report and Recommendation of the Magistrate Judge ("R&R") recommending the Court dismiss defendants Kinard, Barber, McCrorey, and Norton (collectively "Defendants") under 28 U.S.C. § 1915 because they are entitled to judicial immunity. (Dkt. No. 25). For the reasons set forth below, the Court agrees with and adopts the R&R as the order of the Court.

**Background**

Plaintiff, a state prisoner proceeding pro se and *in forma pauperis*, brings this action pursuant to 42 U.S.C. § 1983. (Dkt. No. 1). Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(e) DSC, this case was assigned to a Magistrate Judge for all pretrial proceedings. Under established local procedure in this judicial district, the Magistrate Judge conducted a careful review of the complaint pursuant to the provisions of 28 U.S.C. § 1915 and in light of the following precedents: *Neitzke v. Williams*, 490 U.S. 319 (1980); *Estelle v. Gamble*,

429 U.S. 97 (1976); *Haines v. Kerner*, 404 U.S. 519 (1972); and *Gordon v. Leeke*, 574 F.2d 1147 (4th Cir. 1978). After conducting this initial review, the Magistrate Judge issued the present R&R. (Dkt. No. 25). Plaintiff then filed objections to the R&R.

### **Legal Standard**

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

### **Discussion**

After review of the record, the R&R, and Plaintiff’s objections, the Court finds that the Magistrate Judge applied sound legal principles to the facts of this case and therefore agrees with and adopts the R&R as the order of the Court.

The Magistrate Judge recommends dismissing the Defendants because they are entitled to judicial immunity. *See King v. Myers*, 973 F.2d 354, 356 (4th Cir. 1992). Judges have absolute immunity from claims for damages arising out of their judicial actions. *Mireles v. Waco*, 502 U.S. 9, 11 (1991). However, judges are not immune from liability for nonjudicial actions and actions taken in the complete absence of all jurisdiction. *Id.*

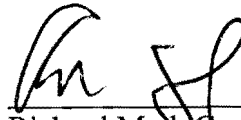
Plaintiff makes two objections. Plaintiff first objects that the acts he complains of are “administrative” and therefore nonjudicial. This objection is unfounded because the acts Plaintiff lists are judicial in nature: hearing an appeal of a prison grievance, denying a motion to

proceed *in forma pauperis*, and ruling on a motion for summary judgment. Plaintiff next objects that a finding of immunity is improper because he is alleging that Defendants conspired with his adversaries prior to issuing their decisions. However, judicial immunity applies “even when the judge is accused of acting maliciously and corruptly.” *Pierson v. Ray*, 386 U.S. 547, 554 (1967); *Dennis v. Sparks*, 449 U.S. 24 (1980) (judges are immune from allegations of conspiring with parties to litigation). Therefore, Plaintiff’s objections are unavailing.

### **Conclusion**

For the reasons set forth above, the Court agrees with and adopts the R&R as the order of the Court. (Dkt. No. 25). Accordingly, Defendants Kinard, Barber, McCrorey, and Norton are dismissed from this action without prejudice and without issuance and service of process on these defendants.

**AND IT IS SO ORDERED.**

  
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Richard Mark Gergel  
United States District Court Judge

March 21, 2014  
Charleston, South Carolina